



POLICE DEPARTMENT

August 14, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Roger McGrath
Tax Registry No. 912004
Highway Unit 2
Disciplinary Case No. 2012-7093

The above named member of the Department appeared before the Court on May 31 and July 1, 2013, charged with the following:

1. On June 19, 2011, Police Officer Roger McGrath, while assigned to Highway #2, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department to wit: when directed to leave the Gilgo Beach Marina by Constable Steven Baisley, Police Officer McGrath identified himself as a New York City Police Officer and refused to leave.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

2. On June 19, 2011, Police Officer Roger McGrath was discourteous to Bab[yl]on Bay Constable Steven Baisley to wit: when directed to leave the Gilgo Beach Marina by Constable Baisley Police Officer McGrath stated in sum and substance, "What are you going to do? Arrest me?"

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT
GENERAL REGULATIONS

3. Said, Police Officer Roger McGrath, having been involved in a police incident on June 19, 2011, outside of the New York City area, did thereafter fail and neglect to report said incident to the Department's Operations Unit as required.

P.G. 212-32, Page 1, Paragraphs 1 & 2, Note – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS
OF THE SERVICE
COMMAND OPERATIONS

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office. Respondent was represented by Michael Martinez, Esq., Worth, Longworth & London LLP.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 3 and Not Guilty of Specification Nos. 1 and 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Town of Babylon Bay Constable Steven Baisley as a witness. It also introduced the Department investigator's interview of Person A (see Department's Exhibit [DX] 4, transcript).

Town of Babylon Bay Constable Steven Baisley

Baisley had been a Bay Constable for the Town of Babylon since 2009. He was a New York City Police Department (NYPD) police officer approximately from 1967 to 1969. He was a Nassau County police officer from then until 1991.

Bay constables were peace officers who enforced the laws and regulations of the Town, specifically regarding its beaches and parks. On Sunday, June 19, 2011, Baisley was working from 0800 to 1800 hours, assigned to a post at Gilgo Beach. He was stationed at the underpass

that went under Ocean Parkway from the marina and parking lot on the bay to the beach along the ocean (see DX 1-3, Google Earth photographs: detail of entry booth, detail of public buildings and underpass entrance, and wide view, respectively).¹ The parking lot was for both the marina and the beach. A booth at the entrance controlled access to the parking lot. Town residents that possessed “stickers,” i.e., seasonal passes, could enter, or a fee could be paid. The underpass was about 500 feet from the entrance. The marina also contained the Gilgo Inn, a bar and restaurant.

Slightly after 1200 hours, the “manager,” Person A, approached Baisley. She said that a man had gone around the line at the toll booth on a motorcycle. She pointed to Respondent, who was standing by a motorcycle in the motorcycle parking area.

Baisley approached Respondent and asked him why he pulled around the booth. Respondent answered that the line was taking too long because the woman attending the booth was socializing with the occupants of vehicles ahead of him. Person A was in the vicinity of Baisley and Respondent at this time and was “part of the conversation.” But “there seemed to be a verbal altercation going on” between Person A and Respondent, so Baisley tried to get the former away from the scene. She was “very angry. . . . They both seemed to be very angry.” Respondent’s “whole demeanor” was “very angry. . . . He was loud.” Several Gilgo Inn patrons came over to see what was going on. Two other bay constables also appeared.

Baisley was able to get Person A to leave the scene. She walked to her office a short distance away and “apparently” called her supervisor on the telephone. Person A’s assistant emerged and Baisley asked what was to be done. The assistant said that Respondent “would have to leave” because he was “in violation of . . . the rules,” specifically the rule to present your seasonal pass.

¹ The Advocate stated that the numerical markings on the exhibits were placed there by Baisley prior to trial.

Baisley agreed that he told Respondent "he had to leave." When asked if he told Respondent why he had to leave, Baisley responded affirmatively and said he told Respondent that "the manager would like him to leave because he was in violation." Respondent refused to leave. He said that he was a Town resident, "he was delayed," and had a right to be there.

Baisley testified that "[t]here was a whole conversation" and "negotiation attempting to get him to leave peacefully." He did not leave, however, and as a result, Baisley prepared an incident report. This preparation was at the request of Person A and her supervisor. Baisley did not try to eject Respondent physically because he "was informed to fill out the incident report." Baisley told Respondent that if he did not leave, the Town would most likely revoke his pass. Respondent mentioned to Baisley that he was an NYPD police officer. Baisley testified that Respondent said "he wanted to talk to Person A, and that she lived in his neighborhood, and he would be able to find her through his work."

On cross examination, Baisley stated that the daily fee for non-residents at Gilgo Beach was about \$40, "pretty steep." The seasonal pass sticker had to be affixed to the vehicle. Each vehicle needed its own pass. The checker did not need to stamp the pass; she just needed to see that it was present. Generally the checkers were "young kids, teenagers, older teenagers."

Baisley testified that his job was to search coolers and prevent beachgoers from bringing alcohol onto the beach itself. If people brought alcohol, he told them to return it to their vehicle. He was armed while working. Another of his responsibilities was to prevent fights. He had the power to issue summonses, which were answerable in Town Court, but had only done so in the past for parking.

Baisley got the impression that Person A and Respondent had been in "a heated exchange." It was an unusual occurrence that Person A flagged down Baisley. She never had

approached him before about someone running a stop sign, but Baisley nevertheless did not find it odd that she approached him to complain about Respondent doing so. He often had addressed such situations in the past. Here, he thought the real issue was that Respondent cut the line.

Baisley's post was about 50 feet away from the motorcycle area. He was with two other bay constables.

Baisley confirmed that Person A was not his boss. She was "the dock master and the manager of the marina." When asked, "The marina is where the boats come in, correct?," Baisley answered, "And the beach. Well, it's a complex. The boats come into the bay side, then the tunnel goes to the ocean." Counsel continued, "Who was in charge of that whole place?," but Baisley countered, "As far as what?" Finally, counsel asked, "Are there any supervisors, I mean, or -." Baisley replied, "That would be Person A. She was the manager." Baisley believed that Person A had the authority to throw someone off the beach, through a bay constable.

Baisley might have met Person A only once before. She "seemed okay," although he recalled stating in his interview with NYPD investigators that she "sometimes can act like a maniac" because he "had been informed she tended to become very emotional and easily upset." That was why he got her away from the scene. She was reluctant to go at first. He told her that he would address the issue and that she should go to her office. It was better to interview people separately anyway and the situation could not improve if there was a crowd present.

Person A said that Respondent "would have to leave. I don't know if she said you have to leave." Baisley did not recall "the exact verbiage." Baisley was asked what he relayed to Respondent: "Now, just to be clear about the language, did you convey to him that Person A wanted him to leave, or that you wanted him to leave?" Baisley answered, "I don't remember

the exact verbiage.” Whatever the language, “The thought was conveyed to him, the message, that he would have to leave.”

Respondent informed Baisley that he was sitting on a motorcycle in 90-degree heat. He said that he had a Town permit and would not leave. Baisley did not recall him saying that the attendant at the booth waved him through. Baisley did not interview the booth staffer.

Baisley informed Respondent that the Town might revoke his pass even if he left for the day.

It worried Baisley when Respondent said, in sum and substance, that he was a police officer and could find out where Person A lived. Baisley believed that Respondent said “he knew she lived in his neighborhood and he can find out where she lives.” Baisley did not know if Respondent wished to harm Person A or if he merely wanted to talk to her under calmer circumstances, but Baisley saw it as a veiled threat.

Baisley’s supervisor told him that the Town attorney forwarded the incident report to the NYPD.

Baisley testified that Person A no longer worked at the beach.

On re-direct examination, Baisley indicated that although he would have gone around the line if the booth attendant was socializing, that would be if he were in a marked patrol car, not his personal vehicle.

Respondent was angry when he made the comment about finding out where Person A lived.

Upon examination by the Court, Baisley stated that he did not think Person A managed the beach itself, only the parking lot and marina. The lifeguards managed the beach. Person A’s title

was “the dock master and the manager” of the marina, but she also was in charge of the parking lot and the Gilgo Inn.

Baisley did not get the booth staffer’s name because it was his understanding that Person A witnessed Respondent going around the line.

In a previous incident at another Town marina at Cedar Beach, there was a vessel that had overstayed its permit. A different manager asked, through Baisley, that the operator depart with the vessel. Baisley also possessed arrest powers as a bay constable.

Interview of Person A

Person A stated that the incident occurred a few minutes after noon on June 19, 2011. She was “the head manager and dockmaster” at Gilgo Beach and 2011 was her twelfth season there. She “like r[a]n both sides, I run everything, the money and everything.”

Person A stated that the booth attendant contacted her and said she had a question about “the ticket.” Person A walked over to the booth, where there was a car and a motorcycle behind it. The occupants of the car were asking a question about the beach. The motorcycle went around the car and ran the stop sign.

Person A yelled at the motorcycle driver, i.e., Respondent, saying, “[S]top, stop, what are you doing? You’re going to hit somebody.” Respondent looked at her but kept going, “you know, like drop dead, that routine.” He stopped at the bar.

Person A approached Respondent and said, “I don’t know what you think you’re doing here . . . but you’re not supposed to be doing that. You could hit somebody running the stop sign. You don’t pull around a car, you wait your turn, so now I want you to leave the beach.”

Respondent responded, "[W]ell who the hell are you?" Person A answered, "I'm the head manager here, and I'm running the beach, and I'm asking you to leave." Respondent told her that he was not leaving. "You know, just stupid stuff."

Person A approached the bay constable because "I wasn't going to deal with him anymore." She told the constable that she wanted Respondent ejected from "the beach" for "unsafe conduct . . . I can't have that, 'cause everybody would be doing that." Other vehicles had blown past the checkpoint before.

The constable replied, "[O]kay," and walked over to the bar. Person A was "agitated." She did some work on the dock and returned to her office. The constable told her to stay in her office and he would take care of it. "'Cause they asked him to leave, and he said, no I'm not leaving." Respondent yelled, "[D]oesn't she know who I am?" Person A did not know him. Another woman approached Person A and said, "[J]ust stay here, Person A, we'll take care of him, he's being a real ass out there, and he's saying stuff. Don't worry about it . . . I don't want you out there with him."

Person A said that Respondent indicated his motorcycle was overheating. She replied, "[L]ook, if your bike overheats waiting a few minutes at the booth, then what do you do at a stop light? So don't tell me that, come on. He just didn't want to wait." Person A also asserted that Respondent's pass was not visible; it was on top of his gas tank. One would "have to approach him anyway to see if he even belongs."

Person A indicated that Respondent said he was a Town resident and did not have to leave. He said, "I know where she lives, and all this other garbage. . . . [H]e would find out where she lived from his job, and speak to her directly." She heard from other bar patrons that Respondent was an NYPD officer. Person A felt threatened but also thought he might have been

playing to the crowd. The investigator suggested, "I'm going to assume he was being more than likely very belligerent with" the bay constables as well. Person A agreed.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent had been a member of the Department for over 19 years and had been assigned to the Highway Unit for over 13 of them. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent had been going to Gilgo Beach since he was a child and still frequented the beach. The daily fee for non-Town residents was double that for Town residents. To purchase a seasonal pass, a resident had to bring his driver license, registration, and the vehicle for which the pass was intended to a Town office. The pass was vehicle-specific. A Town employee had to place the sticker in a visible spot on the vehicle so that the attendant could see it and wave in the driver when he got to the beach. Respondent had been getting these passes since he could drive.

For 2011, Respondent got a seasonal pass for his motorcycle. The pass was affixed to the left bar that framed the front wheel. The pass cost \$40 and gave him access to all the Town beaches.

Respondent started riding motorcycles in 1976 and was an experienced rider. As a Highway officer, he had escorted three United States presidents and various United Nations-related dignitaries. He had been enforcing highway laws for the past 13 years.

Respondent swam at the beach sometimes but usually he just took "a nice leisurely ride" over the bay and along the ocean. He would "go in, stop at Gilgo, have a hamburger and a can of soda, then hang out for a little while, see my friends" and go home. Respondent described the Gilgo Inn part of the complex as "a pub with a snack bar on one side of it and a pub on the other side of it." Respondent testified that he had not drunk alcohol in 25 years.

Gilgo Beach was a short ride from Respondent's home and he rode there three or four days a week, sometimes on the way home from work, during the summer season. He did so on June 19, 2011, and arrived midday. There was one car in front of him waiting on line to enter the beach complex. There were four young men in the car talking to the young woman working the booth. The booth, staffed generally by "summer kids," was a job Respondent himself held when he was in high school.

Respondent was listening to music and a couple of songs went by. He waited for anywhere from six to ten minutes. He looked at the attendant, raised his hand and pointed at the sticker. Although she could not see the sticker from where she was, she gave him the thumbs-up. He interpreted this as, "Go ahead, you're good," so he went around the right side of the car, "slowly and safely" because there was a blind spot at the booth, and headed toward the Gilgo Inn and motorcycle parking area.

Respondent asserted that as he drove around the back of the booth, Person A "comes running out of nowhere screaming like a lunatic." They would not have been able to see each other from where they were before Respondent proceeded. He did not really care what she was

saying because he did not do anything wrong. Thus he kept going, and when he parked, she came over "in a huff." Person A "went into a complete and total out of control screaming match," saying, "What the [fuck] and what the hell are you doing, and what do you think you are doing." Respondent replied, "[E]xcuse me, time out. . . . [C]an we calm down on this."

Respondent identified Person A as "the dock master or beach manager." He then revised this to "actually dock master, not beach master [sic]." Town residents needed a pass to use the 60 slips in the marina. Otherwise, there was a high daily fee.

2011 was Person A's third summer at Gilgo Beach. § [REDACTED]

[REDACTED] According to Respondent, Person A was "anti-motorcycle" and went out of her way to make riders uncomfortable.

Person A waved over Baisley, the bay constable. She told Baisley, "I want him ejected" and his pass revoked and removed from the motorcycle. Respondent told Baisley that he did not do anything wrong. He showed his sticker to the "little girl" at the booth and she waved him through. Person A was "still being a little overzealous" and Baisley asked her to go to "the manager's office." She complied.

Once Person A was gone, Baisley told Respondent, "She would like you to leave the beach." Respondent refused, saying he did nothing wrong but would leave after having a burger and a soda. Respondent did not believe she had any authority over him, as he was present legally at the beach and had a seasonal pass. Baisley was "pretty laid back" about Respondent's response, even though Person A kept pushing the issue. Baisley never told Respondent, "I'm ordering you to leave this beach," or "either leave or I am going to arrest you." Respondent did not believe that he told Baisley, "[W]hat are you going to do, arrest me?"

Respondent testified that one of the other beachgoers at the picnic area recognized him and called out, "[W]hat are you doing? He's a cop." Respondent showed his Department identification to Baisley.

Respondent mentioned to Baisley that he knew Person A from around town and thought she lived nearby. He said that "if I saw her away from it, to discuss it and calm it down." He indicated that they had exchanged pleasantries before. It was possible that he said something like, "I know where she lives, I will talk to her about this," but only to deescalate the situation, not to go to her house and threaten her.

Respondent only stayed another 15 minutes. He was a little upset and felt uncomfortable, so he ate and went home.

The next day, Respondent went to Town Hall and complained. A Town employee said that there had been previous complaints about Person A and asked him to write a statement. He did so. About a week or two later, Person A was fired.

Respondent did not report the incident to the Department because he did not think it rose to that level. There was no criminal activity or summons issued. Baisley took no enforcement action and two other constables told him to "leave it alone."

On cross examination, Respondent testified that the Monday through Friday daily fee for non-residents was \$20 and \$40 on Saturday and Sunday. This was in comparison to \$8 at nearby State of New York beaches. Respondent stated that the attendant would be able to see his pass if she was sitting in the lawn chair and he rode up to her.

Respondent first saw Person A when she was walking toward the booth. She wore T-shirts with "dock master" on the back. Other people wore "manager," and the younger people had "beach employee." There was a head manager for the entire beach. Respondent's

understanding of Person A's job as dockmaster was to collect the fees for the boats and to enforce rules regarding use of the dock and bulkhead. Alcoholic beverages were allowed there but she had to prevent open containers from being taken into the parking lot.

Person A told Respondent that he had to leave for reckless driving and failing to stop for the booth attendant. He maintained that he did not yell back at her. They were speaking for there to four minutes before Baisley came over. It took a few minutes for her to return to her office upon Baisley's request. "Another" manager had to ask her to do so. The head manager kept Person A by the office but not by physically restraining her.

Respondent admitted that Baisley did "[n]ot really" ask him if he knew Person A from around town. Baisley did not ask if Respondent knew where she lived. Respondent agreed at trial that he could have approached Person A another day at Gilgo Beach rather than at her home or around town.

Respondent talked to Baisley for six to ten minutes. Respondent admitted that he was aware Baisley was going to file an incident report. He contended that the other two bay constables "looked right at me and said, Roger, no, he's not." Respondent then testified that Baisley only said he might file a report. He admitted stating in his official Department interview that he asked the manager, "[D]o I have to go up to town hall and file a computer complaint, because this . . . gentleman is telling me he is going to write an incident report."

On re-direct examination, Respondent agreed that the investigator at the interview asked him, "[S]o did he tell you, what did he say?," and that he answered, "[W]ell, you know, I might have to write an IR. I said, Constable, do whatever you have to do, but I pay to come on the beach, I have the sticker, I'm legal to be here."

Upon questioning by the Court, Respondent conceded that he did not know why the checker gave him the thumbs-up if she could not see his sticker. He noted that it was common for them to wave you through if they thought you were pointing at a sticker.

Respondent stated that Person A was approximately in her mid-40s, younger than him. He characterized her position as a "part-time summer job" and said that the marina was open only during the summer. Person A's office was in the large building visible on DX 2 and 3, separate from the Gilgo Inn. He first saw her when she was walking from the dock, not her office.

Respondent stated that under his understanding, if there was a dispute, for example, about whether someone should be admitted at the booth, the bay constables would handle it. If there was a motorcycle parked in a regular parking spot and someone wanted it moved, the Suffolk County Police Department would have to be called.

FINDINGS AND ANALYSIS

On June 19, 2011, while off-duty, Respondent rode his motorcycle to Gilgo Beach, a barrier beach off Long Island operated by the Town of Babylon, Suffolk County. Gilgo Beach included a parking lot, marina and the Gilgo Inn restaurant on the bay side of the complex. There was a separate building with Town offices (see DX 2, detail; DX 3, wide view).

Gilgo Beach technically was open to the public but was meant for Town residents like Respondent. Non-residents had to pay five times what they would pay at one of the nearby state beaches like Jones Beach or Robert Moses State Parks for a day's admission, while residents could purchase a seasonal pass for the same price. A Town employee had to affix the pass securely to the front of the resident's vehicle, and each vehicle needed its own pass.

Access to the beach was through one lane into the parking lot. There was a small booth at which a Town employee checked everyone for residency or a pass (see DX 1, overhead photograph, entrance detail). This position typically was a summer job for a high school or college student.

On the day in question, there was a convertible occupied by several young men at the booth and Respondent was stopped behind them. The woman at the booth was talking to them and it was taking a while. This might have been because they were not Town residents and had to pay the quintuple fee. Respondent raised his hand in the air and pointed to his sticker, which was on the front of his motorcycle near the wheel. The employee gave him the thumbs-up sign and Respondent rode around the car on the right side.

Respondent asserted that as he rode toward the motorcycle parking area near the restaurant, a beach employee, Person A, came yelling "like a lunatic" and confronted him. She accused him of driving unsafely and not displaying his pass to the booth guard. Respondent protested that he did nothing wrong. Respondent and Person A knew each other from the Town but apparently were not friends. Person A told Respondent that he had to leave. He refused.

Baisley, a Town of Babylon Bay Constable, came over to the scene. Bay constables were peace officers that patrolled the beaches and parks of the Town. Person A informed him that she wanted Respondent ejected.

Because Person A did not testify and there was no further definitive proof on the matter, her exact job title was in question. On direct examination, Baisley referred to her as "the manager." On cross, he stated that she was "the dock master and the manager of the marina." He believed that she was in charge of the booth, parking lot and marina, but not the beach itself. Person A stated in her interview that she was "the head manager and dockmaster at the beach."

According to Respondent, she was "Person A the dock master," in charge only of the marina area and not the parking lot or any other part of the Gilgo Beach complex.

Person A and her assistant or superior communicated to Baisley that Respondent had to leave because of allegedly reckless driving and he was in violation of the rule that a beachgoer had to display his pass. Baisley conveyed this to Respondent, but Respondent refused to leave because he had a right to be there as a Town resident. Baisley prepared an incident report.

The first specification charges that Respondent refused to leave "the Gilgo Beach Marina" when "directed to" do so by Baisley. Most of Baisley's testimony on the subject stated that Person A wanted Respondent to leave and Baisley told Respondent of her desire. At one point, Baisley was asked on cross examination, "Do you remember telling him she wants you to leave for the day?," and Baisley answered, "No, I believe I told him you have to leave." Counsel followed up, "Now, just to be clear about the language, did you convey to him that Person A wanted him to leave, or that you wanted him to leave?" Baisley responded, "I don't remember the exact verbiage," later adding, "The thought was conveyed to him, the message, that he would have to leave." Baisley testified, "I said he would have to leave, and I have no idea what the town was going to do with his permit after that."

The totality of the evidence indicates that Baisley was conveying Person A's wishes that Respondent leave the beach, rather than directing him to leave as an order from a law enforcement official. Baisley was a peace officer with the power to arrest and summons. Although he never had exercised this power as a bay constable, he could have arrested or summonsed Respondent for trespass upon his failure to obey the ostensible order. He could have used the assistance of the other two bay constables to eject Respondent or called for backup from the Suffolk County Police. Instead, Baisley merely filled out an incident report. In fact, this was

done at the request of Person A and her supervisor. If Baisley wanted to eject Respondent, he could have done so. Baisley's actions are inconsistent with the conclusion that Respondent failed to comply with a lawful order from Baisley "direct[ing]" him to leave. As such, Respondent is found Not Guilty of Specification No. 1.

The second specification charges that Respondent was discourteous to Baisley by asking him, in sum and substance, "What are you going to do? Arrest me?" when Baisley directed him to leave the marina. Of course, the Court has found that Baisley did not direct Respondent to leave. But beyond that, there is no evidence that the allegedly discourteous statement ever was made. It was mentioned in opening statements but Baisley never testified to it. Respondent testified that he did not believe he made such a statement. Accordingly, Respondent is found Not Guilty of Specification No. 2.

The third specification charges Respondent with failing to report this "police incident" to the Operations Unit. It was undisputed that Respondent did not notify the Department, but he asserted that the incident did not rise to the level of required reporting.

It is difficult to state a comprehensive rule as to what constitutes an unusual off-duty police occurrence for the purposes of notifying the Department, but one important guideline is if the police respond to the scene of a dispute. See Case No. 86191/10, p. 27 (Nov. 23, 2011) (police responded to airport scene where officer argued with screening officers and had extensive interactions with her). Here, Baisley, a peace officer with the title of Bay Constable and the powers of arrest and summons, responded to the confrontation between Person A and Respondent, either on his own or at the request of Person A or a colleague. He separated the two of them, got both of their accounts and information, and wrote an incident report that later was forwarded to the Town attorney and onward to the Internal Affairs Bureau. Respondent properly

identified himself to Baisley as a Department member but made a comment that led Baisley to worry that he was going to use his Department status to look up information on Person A. If nothing else, it was Baisley's involvement that transformed the dispute into an "unusual police occurrence." Once Respondent was informed that a law enforcement officer was preparing an incident report about the matter, he should have reported it to the Department. Accordingly, the Court finds Respondent Guilty of Specification No. 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on February 28, 1994. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of failing to report an off-duty incident. He was at the beach when he was confronted by a manager who claimed that he was riding his motorcycle unsafely and failed to display his seasonal pass to the checker. A loud argument ensued. A peace officer known as a bay constable responded and wrote an incident report. Respondent failed to report this incident to the Department.

The incident as a whole was relatively minor. There was no physical confrontation, only yelling, most of which apparently was instigated by the manager and not Respondent. The entire incident perhaps could have been avoided were it not for the manager's insistence that Respondent be ejected from the beach. The Court also is aware of Respondent's long tenure and good record, see Confidential Mem., *infra*. Moreover, the Department, according to its

Disciplinary Cover Sheet, offered a penalty of 15 days before trial for the entirety of the misconduct, most of which Respondent has been found Not Guilty.

As such, the Court recommends that Respondent forfeit five vacation days as a penalty. Cf. Case No. 85981/09, p. 9 (Apr. 25, 2011) (five days for officer who failed to notify Department after becoming aware that she was the subject of [REDACTED] investigation; allegation was untrue and actually concerned her [REDACTED] leaving officer's [REDACTED] home alone, officer cooperated fully with that investigation, and no harm came to Department from failure to notify).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED
SEP 03 2013

RAYMOND W. KELLY
POLICE COMMISSIONER


POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROGER MCGRATH
TAX REGISTRY NO. 912004
DISCIPLINARY CASE NO. 2012-7093

In 2012, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 4.5 “Extremely Competent/Highly Competent” in 2010 and 2011. He has been awarded two medals for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials